

THERAPEUTIC USE OF CANNABIS ADVISORY COUNCIL

Friday, March 28th, 1:00-4:00

Legislative Office Building Rooms 205-207

MINUTES

Members in attendance were as follows:

Representative James R. MacKay (Chair)
Representative Don “Ted” Wright
Michael Holt, NH Department of Health and Human Services (Clerk)
Colette Horgan, Exeter Hospital
Devon Chaffee, Esquire, NH Civil Liberties Union
Kelly DeFeo, APRN, NH Nurse Practitioner Assoc.
Stuart Glassman, MD, NH Medical Society
Andrew Shagoury, Public Member
James Vara, NH Dept of Justice

Members absent were as follows:

Robert Duhaime, Board of Nursing
Lisa Kilar, Qualifying Patient
Senator Jeff Woodburn
Robert Andelman, MD, NH State Board of Medicine
Lt. John Encarnacao, NH Department of Safety
Peter Gosline, Monadnock Community Hospital

Review and Approval of Minutes

Approval of the minutes from the February 21 meeting was moved by Rep Wright with a second by Dr. Glassman. All in favor.

Discussion of rule updates He-C 401 Patient Registry Rule:

John Martin, Manager, Bureau of Licensing and Certification, and Mary Castelli, Senior Division Director, Office of Operations Support, were asked to assist with presentation of the rule.

The revised rules were distributed, along with a corresponding grid of comments received and Department responses/action.

Mr. Holt walked through the changes made to the rule, He-C 401, based on comments received by the Advisory Council’s and the general public.

Mr. Holt pointed out the language change on page 8 #(8) regarding signing a false statement made on the application is punishable as unsworn falsification pursuant to RSA 641:3.

Attorney Chaffee asked about why her comments were not accepted regarding medical records. Is it common to utilize medical records within the Department? Attorney Castelli said that they often look at individual records when looking at reviews of certain facilities. Attorney Chaffee believed that using individual medical records was intrusive and that this allowed unfettered access to individual’s medical records. She asked the Department to review this section to see if the Department could come up with narrower access.

Mr. Holt indicated that the record maintenance and access is already limited in rule to those medical records which support the certification of a qualifying medical conditions.

Paul Twomey, House Legal Counsel and member of the public asked: Do you have access to medical record in other situations? Mr. John Martin said yes, in certain situations under public health statutes, but if you have a prescription and pay privately, the Department would not have access. In this case the Department is involved and needs that information because the Department is regulating it.

Chief Shagoury asked about Page 12, Paragraph (g)(1), which was removed entirely but said that the reference to financial incentive is in the statute. Attorney Castelli said this rule section is about a provider's written certification, and in statute, it is a broader reference.

Attorney Chaffee asked about Section 401.09 regarding the addition of conditions and asked why NH is not taking the case by case basis approach called for in the statute. Attorney Castelli spoke to the process proposed in rule, said that other states have adopted it, and that the Department sees it as a fair, thoughtful, and meaningful way to accomplish the process. Attorney Chaffee said that what is in rule is not consistent with legislative intent.

Chief Shagoury asked if there was provision in the rule for the suspension of a registry identification card after arrest but before conviction? Attorney Castelli said that the conviction would have to be related to the chapters mentioned in statute. Department will consider further.

There was discussion regarding the process of returning registry identification cards. Rep. Wright said that it seems like a lot effort and undue burden on the part of the Department and that this could be dealt with better if the card has an expiration date.

Attorney Chaffee raised two more comments:

- There is still substantial disagreement on the timing of the issuance of the registry identification cards, with DHHS not issuing cards until Alternative Treatment Centers (ATCs) are up and running. This is not consistent with legislative intent and this issue will be raised at JLCAR, since people are very concerned that it will take years for protection under the law if this approach is followed.
- Case by case basis approach regarding additional conditions is not consistent with statute. She asked that the Department consider the case of patient who has a substantially different manifestation of a condition that has been previously rejected, and asked that "substantially different symptoms" be added to the criteria for considering a new petition. Rep. Wright said he was concerned about tying it to research when the federal government does not recognize medical marijuana.

Mr Holt indicated that the Department's plan is to enter formal rulemaking by April 4th, which would keep the Department on target for the June 20th JLCAR. Comments can be made during the public comment period and at the public hearing which, will be 3 weeks after the rule is filed with the Office of Legislative Services and is noticed in the Rulemaking Register.

Rep Wright said that he has received no response from the Attorney General's Office on the issue of local zoning for Alternative Treatment Centers. This question was asked of Attorney Fredericks at the February 21st meeting. James Vara said he would follow up.

Kelly DeFeo asked about the Qualifying Patient appointment to the Advisory Council, and asked about the possibility of an alternate appointment. Rep. MacKay said that would depend on whether an alternate

is allowed in statute. Another approach would be to ask for a new member to be appointed to replace the individual who has not been attending the Council meetings.

Dr. Glassman asked if there was any update on outcome measures from other states? Rep. MacKay said he has had no response from NSCL.

Dr. Glassman said that the NH Medical society is concerned about different strains of marijuana; who is looking into the strains and how the provider will know what should be provided? Rep. Wright has similar concerns and suggests that maybe a CEU could be created to educate providers.

Legislative Update

SB 234, regarding criminal records check amendment. Rep. MacKay would like to have the Advisory Council support the bill. Mr. Holt moved Council endorse of the bill. Rep. Wright seconded. All in favor

Presentation: NH Therapeutic Use of Cannabis Law; the Patient's Perspective – Matt Simon, Marijuana Policy Project

- What have patients been asking for in NH? To be protected from arrest and to have a way to access cannabis in a safe way.
- 1942-1988: Era of Cannabis ignorance. At some point recommendations were made to decriminalize cannabis.
- Federal law prohibits decriminalization, so states had to take action.
- California Prop 215 is the best known and least restrictive state medical marijuana law.
- 20 state and the District of Columbia have passed laws.
- Some states have opted to allow cannabis to be available from a dispensary. Good to have people inform them on strain and dose.
- 15 states allow home cultivation.
- Patients and regulators seem to be happy with the Maine law.
- Problems with NH law
 - No protection without a card.
 - Qualifying conditions are uniquely restrictive.
 - HB 684 was less restrictive than this law.
 - Bill passed removed home grown, PTSD as a condition, affirmative defense
- The legitimacy of the Advisory Council has been undermined. NH Association of Chiefs of Police took the place of a public member. The Qualifying Patient appointment has yet to come to a Council meeting
- Requests that the Council vote to endorse HB1622, to endorse the home cultivation of cannabis. The bill already passed the House.
- Urges DHHS to begin issuing cards.
- Urges DHHS to fix its case by case policy on adding additional conditions.

Chief Shagoury said that he felt his contributions to the Council and the to the rules in particular had been helpful, as evidenced by the Department's changes to the propose rules in response to his comments and suggestions, particularly regarding the section on minor qualifying patients. Attorney Chaffee supported Chief Shagoury's contributions to the Council and rule, and agreed that his proposed language changes were helpful.

Meeting adjourned at 3:40